IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11554 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRIT BALVANTRAM BHARUCHA (KHATRI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 11554 of 2001

MR NM KAPADIA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order 25.11.2001 passed by the Commissioner of Police, Surat City in exercise of power under Section 3 of the

PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one registered offence against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. The only ground that is canvassed by learned Advocate Mr. Kapadia for the petitioner is that a representation made on behalf of detenu on 3.12.2001 supported by two affidavits sworn by Ashok M. Kapadia and Vikas Maheshchandra Kubervala controverting the allegations made in the statements of anonymous witnesses have not been properly considered by the authority. He submitted that the deponent in that affidavit has controverted the allegations made by the anonymous witnesses. It was therefore expected of the Government to whom the representation was made, to ascertain the correctness of the statements by cross-checking. This exercise is not undertaken and therefore it would virtually be non-consideration of the representation and therefore the right of the detenu is infringed.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the rival side contentions, it is amply clear that the a representation made by the brother of the detenu to the Commissioner of Police on 3.12.2001, supported by two affidavits of Vikas Maheshchandra Kubervala and Ashokbhai Mohanlal Kapadia, who in terms stated that no incident had occurred as stated by the anonymous witnesses in their statements. It was incumbent upon the authority to have verified the version given by the anonymous witnesses as well as these deponents, which go contrary to each other and to consider the incidents narrated by the anonymous witnesses were correct or not. Non-consideration of this can be said to have rejected the petitioner's representation mechanically. This would affect the right of the petitioner of making an effective representation and in turn his continued detention would be vitiated. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of

detention dated 25th November, 2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu Kirit Balvantram Bharucha (Khatri) be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas